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February 10, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: MM Docket 00-10
MM Docket 99-292
RM-9260

Dear Ms. Salas:

On behalf of Pelican Broadcasting Company, there is transmitted herewith and filed, an original and four copies of its Comments with Regard to Establishment of a Class A Television Service in the above-referenced proceeding.

Should there be any questions concerning this matter, kindly communicate directly with the undersigned counsel.

Very truly yours,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

By: 

Bruce A. Eisen

Enclosure

Federal Communications Commission

WASHINGTON, D.C. 20554

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IN THE MATTER OF)

Establishment of a Class A
Television Service)MM Docket No. 00-10
MM Docket No. 99-292
RM 9260)

TO: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF PELICAN BROADCASTING COMPANY
WITH REGARD TO ESTABLISHMENT OF A
CLASS A TELEVISION SERVICE

Pelican Broadcasting Company ("Pelican"), by its attorneys, hereby submits its Comments in Response to The Commission's Order and Notice of Proposed Rulemaking regarding the Establishment of a Class A Television Service in MM Docket No. 00-10 and MM Docket No. 99-292, released January 13, 2000 ("NPRM"). In support thereof, the following is respectfully shown.

Pelican is a mutually exclusive applicant for Channel 61 at Bay City, Michigan, having filed its application on July 23, 1996. A competing applicant, Vista Communications Inc. ("Vista"), filed its application for Channel 61 at Bay City on July 10, 1996. Thus, the applications have remained pending before the Commission for nearly four years. At the time that these applications were filed, the Commission had imposed a "freeze" for new television stations which were less than 161 kilometers from major markets. Bay City is within this distance from Detroit, Michigan.

The Commission has reallocated Television Channels 60-69 for public safety use and commercial fixed mobile services. See, Reallocation of Television Channels 60-69, Report and

Order, 12 FCC Rcd. 22953 (1998). By refusing to allow those channels to be utilized for television broadcast services, the Commission had forced applicants for full-service NTSC television stations to remain in limbo for a significant period pending the opening of an appropriate window to apply for lower channels. See, Reallocation of Television Channel 60-69, FCC 98-261, released October 9, 1998.

Thus, more than one year passed before the Commission actually opened the window filing opportunity. See, Public Notice, DA 99-2605, released November 22, 1999. During this time and in anticipation of that window, Pelican and Vista actively negotiated their mutual exclusivity to determine whether or not they could locate a suitable channel and resolve the proceeding through settlement. They intend to file, before the close of the window on March 17, 2000, a settlement agreement in accordance with the last paragraph of the Public Notice which provides for resolutions of such mutually-exclusive cases.

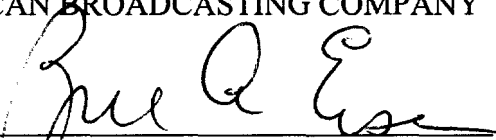
Unfortunately, the subject NPRM threatens to undercut the time and expense incurred by Pelican and Vista, and could derail their settlement negotiations. The NPRM is intended to implement the Community Broadcasters Protection Act of 1999, 47 U.S.C. § 336(f) ("CBPA"). The CBPA allows an LPTV station, previously endowed with secondary regulatory status, to now apply for Class A status if it meets certain criteria. This will enable some LPTV facilities to preserve their service areas to the possible exclusion of full power television stations if an LPTV channel conflicts with the full power facility that is sought in the reallocation window. Hence, there is a real potential that Pelican and Vista, who have filed their applications in good faith, remained pending for years, and justly anticipated the resolution of their proceeding through a negotiated settlement and selection of an appropriate channel during the filing window announced by the Commission, will see their plans scuttled. This would be manifestly unfair.

Pelican suggests that, notwithstanding the enactment of the statute, the Commission's rulemaking should strike a fair balance in order to implement the CBPA. The only sensible manner in which the Commission should proceed is to allow those NTSC applicants who have identified lower channels in reliance upon the Commission's 1998 Report and Order to proceed with their amendments and to hopefully achieve settlements before the window closes. In the event that the available channel for Pelican and Vista conflicts with one or more LPTV Class A certification requests, then fairness dictates that the full power applicants should prevail. Such a procedure would not compromise the CBPA because the total number of NTSC proposals that would be affected by this result is minimal. Hence, it is respectfully submitted that protection should be afforded to applications and rulemaking petitions for channels below 60 that are pending when the new Class A rules take effect. At the very least, the Bay City permittee should be allowed to operate on the originally proposed Channel 61 until the DTS transition period ends and an appropriate channel becomes available.

Respectfully submitted,

PELICAN BROADCASTING COMPANY

By: _____


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Its Attorney

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